

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 97008

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-202-97

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

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Regulations Only

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Governor's Signature

State Environmental Commission

Classification [] Proposed [] Adopted By Agency [xx] Temporary [] Emergency []

Brief description of action: Petition 97008 (LCB R-202-97) permanently amends hazardous waste regulations NAC 444.84275, 444.84275 and 444.8632 by amending the reference to federal regulations as they existed on July 1, 1997, and amending NAC 444.8632 to adopt 40 C.F.R. Parts 2, Subpart A, 124, Subparts A and B, Parts 260 to 270, and Part 279 as those parts exist on July 1, 1997. The new regulations provide for increased public participation in facility permitting processes, identify when military munitions become a RCRA hazardous waste, and provide for their safe storage and transport. The federal revisions also include clarification of CESQG disposal options, additional test methods, technical corrections, and industry treatment standards for the management of hazardous waste. The amendments also revise the state definition of hazardous waste (NAC 444.8565) and container labeling requirements (NAC 444.8671) to make them more consistent with federal regulations. The amendments to current antifreeze regulations consist of amendments to NAC 444.9452 to adopt 40 C.F.R. as it existed on July 1, 1997, and technical corrections to NAC 444.8886 and NAC 444.8951.

Authority citation other than 233B: NRS 444.560, 459.485, 495.490 and 459.500

Notice date: December 23, 1997, December 30, 1997, January 6, 1998

Hearing date: January 22, 1998

Date of Adoption of Agency: January 22, 1998

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 97008 (LCB R-202-97)**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 444. This regulation deals updates to references to federal hazardous waste regulations.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 97008 (LCB R-202-97), was noticed three (3) times: December 23, 1997, December 30, 1997 and January 6, 1998 as a permanent regulation in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. The public was also mailed the public notice through the Environmental Commission's mailing list. The Division of Environmental Protection also did a direct mailing to affected public agencies and businesses. A regulatory workshop was held on December 5 in Carson City. Approximately 12 persons representing mining, federal, power utilities, environmental consultants, cities attended the workshop. Concern focused on state enforcement levels on munitions facilities, what are the extent of new federal testing and monitoring requirements and how effective is antifreeze containment requirements for recycling facilities. At the hearing of January 22, 1998 of the Nevada Environmental Commission no public comments were received, either written or in testimony. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

2. The number persons who:

- | | | |
|-----|---|----|
| (a) | Attended each hearing; | 38 |
| (b) | Testified at each hearing; | 25 |
| (c) | Submitted to the agency written comments: | 8 |

3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. See above statement for dates and locations of workshops and notices. Concern focused on state enforcement levels on munitions facilities, what are the extent of new federal testing and monitoring requirements and how effective is antifreeze containment requirements for recycling facilities. No comments were received from affected businesses regarding the regulations at the regulatory hearing of January 22, 1998. Business comments were received during the workshops. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

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4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted by the State Environmental Commission without request for amendment at the January 22, 1998 hearing.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.

This proposed regulation is not anticipated to have any additional adverse economic impact on Nevada businesses. It should have a beneficial impact by simplifying the requirements to comply with federal hazardous waste regulations. The State is required to adopt these federal regulations to maintain authorization for the Resource Conservation and Recovery Act. This allows the State to implement the RCRA program in lieu of the federal government, thereby eliminating the duplicative regulatory authorities. The proposed regulation is not anticipated to have a adverse or beneficial impact, nor immediate or long term upon the public.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There will be no increased cost to the Division of Environmental Protection for enforcement of this regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agencies which the proposed regulation overlaps or duplicates.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The proposed amendments are consistent will those of the federal government and will allow the State to implement the RCRA program.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There will be no additional fees, nor will there be an increase in fees associated with this regulation.

END OF FILING STATEMENT FOR 97008 (LCB R-202-97)

ADOPTED REGULATION OF THE NEVADA STATE ENVIRONMENTAL COMMISSION

LCB File No. R202-97

EXPLANATION - Matter in *italics* is new; matter in brackets [] is to be omitted.

AUTHORITY: §§1-3, NRS 444.560; §§4-13, NRS 459.485, 459.490 and 459.500

Section 1. NAC 444.636 is hereby amended to read as follows:

444.636. 1. The following provisions are hereby adopted by reference:

- (a) Appendix I to 40 C.F.R. Part 258, as that appendix existed on November 8, 1993;
 - (b) Appendix II to 40 C.F.R. Part 258, as that appendix existed on November 8, 1993;
 - (c) The provisions of 40 C.F.R. Part 257.2, as that part existed on November 8, 1993, for the limited purposed of defining "municipal solid waste landfill unit: in NAC 444.591;
 - (d) The United States Geological Survey, Open File Report 82-1033, "Probabilistic Estimates of Maximum Acceleration and Velocity in Rock in the Contiguous United States," for the limited purpose of defining "seismic impact zone" in NAC 444.6793;
 - (e) "Test Methods for Evaluating Solid **[Wastes,] Waste**, Physical/Chemical **[Methods",] Methods,"** Environmental Protection Agency, Publication No. SW-846, for the limited purposes of defining "liquid waste" in NAC 444.692; and
 - (f) The Toxic Substances Control Act Good Laboratory Practice Standards, 40 C.F.R. Part 792, as those standards **[exist] existed** on March 1, 1994, for the limited purpose of conducting scientific studies pursuant to sub-subparagraph (II) of subparagraph (2) of paragraph (b) of subsection 1 of NAC 444.7492.
2. Volume 40 C.F.R. Parts 190 to 259, inclusive, may be obtained from the Superintendent of Documents, **[United States Government Printing Office, Washington, D.C. 20402,] P.O. Box 371954, Pittsburgh, PA 15250**, for the price of **[\$13.] \$22**.
3. The report of the United States Geological Survey may be obtained from the United States Geological Survey, Books and Open Files Reports Section, Federal Center, Building 810, Box 25425, Denver, Colorado 80225, at a cost of \$24.50.
4. ***Publication No. SW-846 of the Environmental Protection Agency may be obtained from NTIS, United States Department of Commerce, Springfield, VA 22161, at a cost of \$243.***
5. The Toxic Substances Control Act Good Laboratory Practice Standards, 40 C.F.R. Part 792, may be obtained from the Superintendent of Documents, **[United States Government Printing Office, Washington, D.C. 20402,] P.O. Box 371954, Pittsburgh, PA 15250**, for the price of **[\$26.] \$19**.

Sec. 2. NAC 444.6885 is hereby amended to read as follows:

- 444.6885 1. The owner or operator of a Class I site shall provide a system to control run on and runoff.
2. The owner or operator of a Class I site shall design, construct and maintain:
- (a) A system to control run on to prevent flow onto the active portion of the landfill during the peak

discharge from a 25-year storm; and

(b) A system to control runoff from the active portion of the landfill to collect and control at least the volume of water resulting from a 24-hour, 25-year storm, as those durations and frequencies for storms are defined in the "Precipitation Frequency Atlas of the Western United States," vol. VII-Nevada, **[stock number 0317-00161,]** prepared by the National Weather Service and National Oceanic and Atmospheric Administration, United States Department of Commerce. The publication may be obtained from the **[Superintendent of Documents, United States Government Printing Office,]** *Hydrometeorological Design Studies Center, Office of Hydrology, National Weather Service, 1325 East-West Highway, Silver Springs, MD 29010*, at a cost of **[\$8.45] \$9**.

3. Runoff from the active portion of the landfill must be handled in accordance with NAC 444.6887.

4. As used in this section, "active portion" means that part of a municipal solid waste landfill unit which has received or is receiving wastes and which has not been closed in accordance with NAC 444.6891, 444.6892 and 444.6893.

Sec. 3. NAC 444.692 is hereby amended to read as follows:

444.692 1. An owner or operator of a Class I site shall restrict the types and amounts of liquids disposed of in a Class I site except as permitted by the solid waste management authority in accordance with subsections 2 and 3.

2. Liquids which are in bulk or not in containers may not be placed in a municipal solid waste landfill unit unless:

(a) The waste is household waste other than septic waste; or

(b) The waste is leachate or gas condensate from the municipal solid waste landfill unit and the new or existing unit or lateral expansion is designed with a composite liner and system for the collection of leachate as described in NAC 444.681.

3. Containers holding liquid waste may not be placed in a municipal solid waste landfill unit unless:

(a) The container is a small container similar in size to a container which would normally be found in household waste;

(b) The container is designed to hold liquids for use other than storage; and

(c) The liquid waste is household waste.

4. As used in this section, "liquid waste" means any waste material which is determined to contain free liquids as a result of a paint filter liquids test, Method 9095, described in "Test Methods for Evaluating Solid **[Wastes] Waste**, Physical/Chemical Methods," Environmental Protection Agency, Publication No. SW-846 **[.]**, *as adopted by reference in NAC 444.636*.

Sec. 4. NAC 444.8427 is hereby amended to read as follows:

444.8427 "Facility for community recycling" means a facility for recycling hazardous waste which has a yearly capacity that is not more than twice the amount of the type of hazardous waste proposed to be recycled that is generated within the region in this state in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July 1, **[1995] 1997**.

Sec. 5. NAC 444.84275 is hereby amended to read as follows:

444.84275 "Facility for community storage" means a facility for the storage and consolidation of hazardous waste which has a yearly capacity that is not more than twice the amount of hazardous waste that is generated within the county in which the facility is or is proposed to be located, as determined by the

generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July 1, **[1995] 1997**.

Sec. 6. NAC 444.850 is hereby amended to read as follows:

444.850 As used in NAC 444.850 to 444.8746, inclusive, unless the context otherwise requires:

1. The words and terms defined in NAC 444.8505 to 444.861, inclusive, have the meanings ascribed to them in those sections.

2. Except for the words and terms otherwise defined in NAC 444.8505 to 444.861, inclusive, the words and terms defined in 40 C.F.R. § 260.10, as it existed on July 1, **[1995,] 1997**, have the meanings ascribed to them in that section.

Sec. 7. NAC 444.8565 is hereby amended to read as follows:

444.8565 1. "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

2. The term includes any:

(a) Hazardous waste or constituent of hazardous waste which is subject to regulation under 40 C.F.R. Part 261; **and**

(b) **[Mixture of wastes from commercial chemical products identified in 40 C.F.R. Part 261.33, which has been discarded or is intended to be discarded, if at least 10 percent of the mixture, by volume, is composed of one or more of its active ingredients; and**

(c) Waste brought into this state which is designated as hazardous waste in the state of its origin. The term does not include waste containing polychlorinated biphenyl, unless it is mixed with hazardous waste.

Sec. 8. NAC 444.8632 is hereby amended to read as follows:

444.8632 1. In addition to the requirements of NAC 444.850 to 444.8746, inclusive, any person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste or used oil shall comply with all applicable requirements of, and may rely upon applicable exclusions or exemptions under 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, and Parts 273 and 279, as those provisions existed on July 1, **[1995] 1997**, which, except as modified by NAC 444.86325, 444.8633 and 444.8634, are hereby adopted by reference. The state environmental commission may use federal statutes and regulations that are cited in 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, and Parts 273 and 279, to interpret these sections and parts.

2. The volumes containing these parts may be obtained from the Superintendent of Documents, **[United States Government Printing Office, Washington, D.C. 20402,] P.O. Box 371954, Pittsburgh, PA 15250**, for the following prices:

| | |
|---|-------------------|
| (a) Volume 40 C.F.R. Part 2 | \$ [39] 31 |
| (b) Volume 40 C.F.R. Part 124 | [39] 40 |
| (c) Volume 40 C.F.R. Parts 260 to [270, inclusive, 273 and 279 | 36] |
| 265, inclusive | 29 |
| (d) Volume 40 C.F.R. Parts 265 to 299, inclusive | 29 |

Sec. 9. NAC 444.86325 is hereby amended to read as follows:

444.86325 1. The following sections and parts of Title 40 of the Code of Federal Regulations, and any reference to these sections and parts, are not adopted by reference:

(a) Sections 2.106(b) and 2.110;

(b) Sections 124.1(b)-(e), 124.4, 124.5(e), 124.9, 124.10(a)(1)(iv), 124.12(e), 124.14(d), 124.15(b)(2), 124.16, 124.17(b), 124.18, 124.19 and 124.21;

(c) Sections 260.1(b)(4)-(6) and 260.20, 260.21 and 260.22;

(d) Section 261.5(j);

(e) **Part 262, Subpart H;**

(f) Sections 264.1(d), 264.1(f), 264.149, 264.150, 264.301(l), 265.1(c)(4), 265.149, 265.150 and 265.430;

[(f)] (g) Section 266.111;

[(g)] (h) Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b) and 268.44;

[(h)] (i) Sections 270.1(c)(1)(i), 270.60(b) and 270.64; and

[(i)] (j) Sections 279.10(b)(2), 279.10(b)(3), 279.10(c), 279.10(d)(1), 279.42(b)(2), 279.51(b)(2), 279.62(b)(2) and 279.73(b)(2).

2. The following parts and sections of Title 40 of the Code of Federal Regulations are adopted by reference, as revised in this subsection:

(a) Part 124 is adopted with the following exceptions:

(1) Delete all references to appeals to the Administrator in section 124.5(b);

(2) Delete all references to "EPA-issued permits" and insert in its place "permits issued by the department," except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);

(3) Delete all references to "when EPA is the permitting issuing authority" and insert in its place "when the department is authorized to issue a permit," except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi); **[and]**

(4) Subpart A is adopted solely for the purpose of establishing procedures for permits for the management of hazardous waste, except that all references to "UIC," "PSD" and "NPDES" are deleted [.] ;

(5) Delete all references to "RCRA part B," "part B RCRA" and "part B" and insert in their place "NRS 459.400 to 459.600, inclusive" in sections 124.31 and 124.32;
and

(6) Delete from sections 124.31(a) and 124.32(a) and 124.33(a) the following sentence:
"For the purposes of this section only, hazardous waste management units over which EPA has permit issuance authority refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 C.F.R. part 271."

(b) Section 260.2(a) is adopted except that "the Freedom of Information Act, 5 U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b)" must be replaced with "NRS 459.555 and any regulations adopted pursuant thereto."

(c) Section **[260.33(a)] 260.33(b)** is adopted except that "in the **[region]** **locality** where the recycler is located" is deleted.

[(d) Section 260.33(b) is adopted except that "and this decision may not be appealed to the Administrator" is deleted.

(e) **(d)** Section 260.41(a) is adopted except that "or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal" is deleted.

[(f)] (e) Section 261.4(e)(3)**(iii)** is adopted except that "in the Region where the sample is collected" is deleted.

[(g)] (f) Section 262.11(c)(1) is adopted except that ", or according to an equivalent method approved

by the Administrator under 40 C.F.R. Part 260.21" is deleted.

[(h)] (g) Sections 262.42(a)(2) and 262.42(b) are adopted except that "for the Region in which the generator is located" is deleted.

[(i)] (h) Sections 264.18(c) and 265.18 are adopted except that "except for the Department of Energy Waste Isolation Pilot Project in New Mexico" is deleted.

[(j)] (i) Sections 264.143(h), 264.145(h), 265.143(g) and 265.145(g) are adopted except that "If the facilities covered by the [mechanisms] *mechanism* are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" is deleted.

[(k)] (j) Sections 264.147(a)(1)(i), 264.147(b)(1)(i) and 265.147(a)(1)(i) are adopted except that "or Regional Administrators if the facilities are located in more than one Region" is deleted.

[(l)] (k) Section 264.151 is adopted with the following exceptions:

- (1) Delete all references to "(of/for) the Regions in which the facilities are [located;"] *located*"; and
- (2) Delete "an agency of the United States Government" from the second paragraph of the trust agreement.

[(m)] (l) Part 270 is adopted except that all references to "interim authorization" are deleted.

[(n)] (m) Section 279.40(c) is adopted except that "unless, under the provisions of § 279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste" is deleted.

Sec. 10. NAC 444.8671 is hereby amended to read as follows:

444.8671 A generator who accumulates or stores hazardous waste on site shall, in addition to complying with the requirements for labeling set forth in 40 C.F.R. Part 262, include on the label of each container of hazardous waste, *excluding those containers described in 40 C.F.R. § 262.34.(c)*, the hazardous waste number assigned by the United States Environmental Protection Agency.

Sec. 11. NAC 444.8886 is hereby amended to read as follows:

444.8886 Each container which stores used antifreeze at a facility for the transfer of used antifreeze or a facility for the recycling of used antifreeze must have a secondary system for containment which:

1. Includes dikes, berms or retaining walls, or the equivalent, which are impervious to the penetration of used antifreeze;
2. Includes a floor, or the equivalent, which covers the entire area within the dike, berm or retaining wall and is impervious to the penetration of used antifreeze;
3. Is large enough to prevent the release of used antifreeze into the soil, ground water or surface water; and
4. Has the capacity to contain either 10 percent of the total volume of the containers within the system or the volume of the largest container within the system, excluding a container which contains *no* free liquid, whichever is greater.

Sec. 12. NAC 444.8951 is hereby amended to read as follows:

444.8951 1. Except as otherwise provided in subsection [4] 2 of NAC 444.8931, a transporter of used antifreeze must hold an identification number. An identification number may be obtained from the Environmental Protection Agency by submitting to the administrator a completed Form [#] 8700-12. This form is available, upon request, by telephone at (800) 882-3233.

2. A transporter of used antifreeze shall comply with all applicable provisions of 49 C.F.R. Parts 173, 178 and 179, as those parts existed on October 3, 1996, which govern the packaging, labeling and placarding of hazardous waste.

Sec. 13. NAC 444.9452 is hereby amended to read as follows:

444.9452 1. All sections, subparts and parts of Title 40 of the Code of Federal Regulations referred to in NAC 444.940 to 444.9555, inclusive, as modified by NAC 444.9453, are hereby adopted by reference as they existed on July 1, **[1995) 1997.**

2. The volumes containing these sections, subparts and parts may be obtained from the Superintendent of Documents, **[United States Government Printing Office, Washington, D.C. 20402,] P.O. Box 371954, Pittsburgh, PA 15250,** for the following prices:

- (a) The volume containing 40 C.F.R Part 260 to **[270, inclusive, 273 and 279 \$36]**
265, inclusive \$29
- (b) *The volume containing 40 C.F.R. Parts 266 to 299, inclusive 29*
- (c) The volume containing 40 C.F.R. Part 761 **[28] 38**

End of Petition LCB R202-97